

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Lordstown Motors Corp., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

Related Docket No. 289

**ELAPHE PROPULSION TECHNOLOGIES LTD.’S RESPONSE AND RESERVATION OF
RIGHTS REGARDING NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT**

Elaphe Propulsion Technologies Ltd., by its undersigned counsel, for its response and reservation of rights regarding Debtor’s Notice of (i) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (ii) Cure Amounts [Dkt. No. 280] states as follows:

1. Each of the Debtors commenced chapter 11 bankruptcy cases in this Court on June 27, 2023 (the “Petition Date”).

2. The Debtors design, manufacture and sell electric vehicles, targeted primarily to commercial fleet customers. The Company’s only fully developed product to date is the “Endurance,” a full-size, all-electric pickup truck known chiefly for its innovative powertrain consisting of four in-hub electric motors.

3. Elaphe Propulsion Technologies Ltd. (“Elaphe”) licenses the in-hub electric motor technology used in the Endurance to Lordstown Motors Corp. (“LMC”) and provided engineering and project management support and other technical assistance to LMC on the Endurance program.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors’ service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.

4. Elaphe and LMC are parties to: (i) a License Agreement dated March 16, 2020, as amended on July 21, 2020 (the “License Agreement”), granting LMC a perpetual non-exclusive license to use Elaphe’s patent rights, designs, software and other proprietary know-how, to make and sell the Elaphe Model L-1500 Endurance Motor for the Endurance program; and (ii) a March 16, 2020, Facilities and Support Agreement (the “Facilities Agreement”) contracting for Elaphe’s design, engineering and manufacturing support from ramp up to full production and launch of the Endurance.

5. The License Agreement and Facilities Agreement allow assignment by LMC under limited circumstances, including the transfer or sale of all or substantially all of LMC’s business or assets, provided the assignee or purchaser is not a “Restricted Purchaser”. Restricted Purchasers are identified in exhibits to the License Agreement and Facilities Agreement and are, with limited exceptions, Tier I and Tier II suppliers and other non-OEMs.

6. On August 8, 2023, the Court entered its Order (A) Establishing Bidding and Auction Procedures, (B) Scheduling Certain Dates with Respect Thereto, (C) Approving the Form and Manner of Notice Thereof (D) Approving Contract Assumption and Assignment Procedures, and (E) Granting Other Related Relief [Dkt. No. 237](the “Procedures Order”). The Procedures Order governs both the sale of Debtors' assets and Debtors’ assumption and assignment of executory agreements.

7. Debtors filed and served Debtors’ Notice of (i) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (ii) Cure Amounts [Dkt. No. 280] on August 21, 2023 (the “Cure Notice”). The Cure Notice schedules both the License Agreement and Facility Agreement as executory contracts potentially subject to assumption and assignment.

8. The Facilities Agreement has been fully performed and is not an executory

agreement subject to assumption and assignment under 11 U.S.C. § 365.

9. At this date, the identity of the buyer - or buyers - of Debtors' assets, if any, what assets will be sold, and the conditions of any such sale are entirely unknown. In light of that uncertainty, and out of an abundance of caution, Elaphe files this response and reservation to preserve Elaphe's right to object to the assignment of either agreement to a Restricted Person under 11 U.S.C. § 365(c)(1)(A) and to adequate assurance of future performance if offered under 11 U.S.C. § 365(b)(1)(C).

Dated: August 30, 2023

WARNER NORCROSS & JUDD LLP.

Stephen B. Grow (P39622)
1500 Warner Building
150 Ottawa Ave. N.W.
Grand Rapids, Michigan 49503
616.752.2000
sgrow@wnj.com

and

SULLIVAN · HAZELTINE · ALLINSON LLC

William A. Hazeltine

William A. Hazeltine (3294)
919 North Market Street, Suite 420
Wilmington, DE 19801
302.428.8191
whazeltine@sha-llc.com

Attorneys for Elaphe Propulsion Technologies Ltd.